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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Date of Decision: 17.03.2025*

+ **RFA(COMM) 512/2024 & CM APPL. No.75412/2024**

AHMED RAZAAppellant

Through: Mr. Fahim Khan, Adv.

Versus

NITISH JAINRespondent

Through: Mr. Ram Prakash Soni, Adv.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

HON'BLE MR. JUSTICE TEJAS KARIA

VIBHU BAKHRU, J. (Oral)

1. The appellant has filed the present appeal impugning an order dated 04.09.2024 [**the impugned order**] passed by the learned Commercial Court in a suit involving a commercial dispute being CS(COMM) 314/2024 captioned *Nitish Jain v. Ahmed Raza*.
2. In terms of the impugned order, the learned Commercial Court allowed the application filed by the respondent [plaintiff in CS(COMM) 314/2024] under Order XII Rule 6 of the Code of Civil Procedure, 1908 [**the CPC**] seeking a decree on admission.
3. The respondent [hereafter also referred to as **the plaintiff**] had filed the aforementioned suit [being CS(COMM) 314/2024] for recovery of a sum of ₹14,74,236/- along with interest from the date of institution of the



suit till the realisation of the amount.

4. The plaintiff claimed that it had supplied garments/fabric to the appellant [hereafter also referred to as **the defendant**] in the normal course of business and a sum of ₹14,74,236/- was outstanding and payable by the defendant. The plaintiff claimed that it had served a legal notice dated 07.03.2024 on the defendant calling upon him to clear the outstanding amount but the defendant had failed and neglected to do so.
5. The defendant had filed a written statement claiming that he had made several payments to the plaintiff, which were not reflected in the statement of accounts filed by him. Further, the defendant claimed that no goods were supplied in respect of certain invoices raised by the plaintiff. Thus, the defendant was not liable to pay any amount against those specified invoices. In addition to the above, the defendant also claimed that he had made part payments against some of the invoices. The defendant filed certain documents, including the ledger accounts in the name of the defendant's sole proprietorship concern (Veer Fabtex), which reflected that a sum of ₹6,21,214/- was outstanding and payable to the plaintiff.
6. In view of the above, the plaintiff filed an application under Order XII Rule 6 of the CPC, claiming that a decree for a sum of ₹6,21,214/- be passed in favour of the plaintiff, being the amount admittedly owed by the defendant and reflected in the statement of accounts furnished by it.
7. The order sheets of the learned Commercial Court indicate that the suit was listed on 27.07.2024. On that date, the learned counsel for the plaintiff had filed the aforementioned application under Order XII Rule 6 of



the CPC after providing the defendant an advance copy of the same. A copy of the said application was once again supplied to the defendant during the course of the hearing and the same is recorded in the order dated 27.07.2024. The defendant was granted ten days time to file a reply to the said application and the matter was listed on 14.08.2024 for reply and arguments on the application filed by the plaintiff under Order XII Rule 6 of the CPC. The parties were directed to appear in person for exploring the possibility of a settlement.

8. Whilst the plaintiff appeared along with his Advocate before the learned Commercial Court on 14.08.2024, the defendant did not appear. However, his counsel joined the proceedings virtually and sought further time to file a reply to the plaintiff's application for decree on admissions under Order XII Rule 6. The defendant was granted further one week's time to file a reply to the said application, subject to payment of cost of ₹2,000/- and the hearing was adjourned to 04.09.2024. The parties were once again directed to appear in person on the said date of hearing.

9. The defendant did not file any response to the application. On 04.09.2024, the learned counsel for the defendant stated in unambiguous terms that the defendant did not wish to file any reply to the said application. He also conceded that the defendant had admitted that an amount of ₹6,21,214/- was due and payable by the defendant. We consider it apposite to reproduce the impugned order in entirety. The same is set out below:

“Previous cost of Rs.10,000/- has been paid by the defendant



to the Ld. Counsel for the plaintiff, through electronic modes.

The Ld. Counsel for the defendant does not want to file any reply to the application of the plaintiff u/o XII Rule 6 r/w Section 151 CPC, filed on 27.07.2024, registered as I.A. No. 01/24.

Submissions of the Ld. Counsels for the parties are heard on the said application.

It was argued by the Ld. Counsel for the plaintiff that, as per the Ledger Account of the defendant, at page 97 of the documents, an amount of Rs.6,21,214/-was admittedly, due against the defendant and therefore, the present application may be allowed and a Decree for the admitted amount may be passed against the defendant.

He has further prayed that the present suit may be proceeded further, for the remaining Principal amount.

The Ld. Counsel for the defendant has admitted that an amount of Rs.6,21,214/-is due and payable by the defendant, and, therefore, the defendant shall pay the aforesaid admitted amount to the plaintiff, in installments.

In view of the submissions of the Ld. Counsels for the parties and the admissions by the defendant, the present application u/o XII Rule 6 r/w Section 151 CPC, is hereby allowed and a Decree for the admitted amount of Rs. 6,21,214/-, is passed in favour of the plaintiff and against the defendant u/o XII Rule 6 CPC. I.A. No. 01/24 is disposed off accordingly. Decree Sheet be prepared accordingly.

From the submissions of the Ld. Counsels for the parties, it appears that there is an element of settlement between the parties. Therefore, the matter is referred for mediation. Parties and their Ld. Counsels are directed to appear before the Ld.



Judge Incharge, Mediation Centre, Karkardooma Courts, for mediation, on 10.09.2024 and to report before this Court, on the next date of hearing on 24.09.2024.”

10. The defendant does not dispute that it had filed a statement of accounts along with its written statement, clearly reflecting that a sum of ₹6,21,214/- was payable to the plaintiff. He, however, blames his counsel for not drafting a proper written statement. It is his case that he had supplied all the documents to his counsel and the written statement was prepared on the counsel’s advice. However, the said written statement was deficient and did not specifically state that the defendant had cleared all the amounts as payable by him. He also states that his counsel did not file all relevant documents along with the written statement.

11. Insofar as the plaintiff’s application under Order XII Rule 6 of the CPC is concerned, the defendant claims that he had instructed his counsel to file a reply to this application and time was also sought for the said purpose. However, his counsel failed to file the reply to the said application and had unauthorisedly admitted before the learned Commercial Court that the amount of ₹6,21,214/- as reflected in the statement of accounts was due and payable to the plaintiff.

12. The learned counsel appearing for the plaintiff earnestly contended that there was no requirement for the defendant to have sought further time to file a reply on payment of costs if the defendant did not wish to file any reply to the plaintiff’s application under Order XII Rule 6 of the CPC. Additionally, he submitted that the defendant had also filed a complaint with the Bar Counsel of Delhi against his counsel, which is pending.



13. We find no merit in the aforesaid contentions. First, there is no dispute that the defendant had filed its written statement along with the statement of accounts, in which it is clearly acknowledged that the amount of ₹6,21,214/- was payable to the plaintiff. Second, the defendant was present in the court on the date when the impugned order was passed. Thus, he was fully aware of the submissions made by his counsel before the learned Commercial Court, including the submission that he did not wish to file any reply to the plaintiff's application under Order XII Rule 6 of the CPC and that a sum of ₹6,21,214/- was admittedly due and payable to the plaintiff.

14. Clearly, in view of the above, this court finds no infirmity with the decision of the learned Commercial Court in decreeing the suit on admissions to the extent of ₹6,21,214/-.

15. The appeal is unmerited and, accordingly, dismissed. Pending application is also disposed of.

VIBHU BAKHRU, J

TEJAS KARIA, J

**MARCH 17, 2025
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Click here to check corrigendum, if any